

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of the CITY OF RICHMOND for an order preserving the wigwag warning devices at the Richmond Avenue Crossing in the City of Richmond, Contra Costa County, California.

Application 02-05-065  
(Filed May 31, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding, following a prehearing conference (PHC) held on September 11, 2002.

**Background**

Applicant City of Richmond (City) seeks to prevent Burlington Northern and Santa Fe Railway Company (Burlington) from removing two wigwag warning devices (wigwags) from the Richmond Avenue grade crossing in the Point Richmond area of the City as part of work to upgrade the signals at the crossing. Burlington's planning for the signal upgrade began in the early 1990's.

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

The work did not begin until January 2002, under a Service Contract originally executed in November 1999 and extended in November 2001. The City, asserting that Burlington had failed to obtain a required encroachment agreement for the work, issued a stop work order on January 19, 2002. Work on the signal upgrade was then halted at a stage of about 70% completion, according to Burlington's estimate.

This dispute comes to the Commission because the City claims that Burlington was required to get permission from the Commission in order to undertake the signal upgrade, but did not do so. Burlington asserts that it has received all relevant approvals and that the City may not interfere with the completion of the upgrade. The City now seeks a Commission order to preserve the wigwags.

### **Scope of the Proceeding**

In response to an ALJ Ruling dated August 5, 2002, the City and Burlington filed Prehearing Conference Statements (PHC Statements) with various documents attached. From the PHC Statements, as well as the City's Application, Burlington's Response, and the City's Reply, it is clear that there is substantial disagreement about a number of factual and legal issues. Evidentiary hearings will be necessary to resolve the disputed issues.

- At this time, the material facts in dispute include the following:
- the City's consent, or lack thereof, to Burlington's signal upgrade plans;
- safety issues at the crossing and its vicinity;
- the necessity for the proposed alterations of the crossing;

- the extent of the proposed alterations; and
- the maintenance of the wigwags as working signals.

The legal issues in dispute include the following:

- the application of Commission General Orders 75-C and 88-A;
- the application of the California Environmental Quality Act, Pub. Res. Code Section 21000 *et seq.*;
- the significance of the Notice to Proceed issued by CalTrans to Burlington in December 1999; and
- the significance of the City's placement of the wigwags on its Register of Historic Sites.

### **Discovery**

The parties agreed that they would exchange documents on the schedule set forth below without the need for formal discovery. They also made a preliminary agreement that, rather than having formal depositions, they would arrange for the City's consultant to talk with a knowledgeable member of Burlington's staff, in the presence of Burlington's counsel.<sup>2</sup> Should any discovery disputes arise, the parties must meet and confer in a good faith effort to resolve them. If that fails, any party may file a written motion in accordance with Rule 45.

Parties shall follow the requirements set forth in the Appendix regarding prepared written testimony and exhibits.

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<sup>2</sup> The parties will notify the ALJ in writing if this agreement is not confirmed.

**Schedule**

The parties have agreed to the following schedule for this proceeding:

October 11, 2002	Parties complete exchange of information
November 15, 2002	Parties concurrently distribute prepared testimony, with copy to ALJ
November 27, 2002	Parties distribute rebuttal testimony, if any, with copy to ALJ
December 12 and 13, 2002 10:00 a.m. to 4:00 p.m.	Evidentiary Hearing at Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco
To be set at close of EH	Concurrent initial briefs
To be set at close of EH	Concurrent reply briefs, if any; submission of case
Approx. March 27, 2003	Presiding Officer's decision filed within 60 days of submission
Approx. April 27, 2003	Presiding Officer's decision becomes effective 30 days after mailing (unless appeal filed per § 1701.2(a) and Rule 8.2)

It is my goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings, and this schedule meets that goal. At this time, I foresee no extraordinary circumstances which would warrant an extension of the schedule.

At the PHC, the parties requested the services of the Commission's mediation program. Any mediation process will be undertaken concurrently with the schedule set out above.

The City has also requested that the Commission hold a Public Participation Hearing (PPH). Because the City, through its placement of the wigwags on its Register of Historic Sites and its advocacy in this proceeding, is adequately representing the views of Richmond residents who have expressed substantial interest in the fate of the wigwags, a PPH is not warranted.

### **Category of Proceeding and Need for Hearing**

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined by the Commission.

### **Assignment of Presiding Officer**

ALJ Anne Simon will be the presiding officer.

### **Ex Parte Rules**

Ex parte communications are prohibited in adjudicatory proceedings under § 1701.2(b) and Rule 7.

#### **IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The presiding officer will be Administrative Law Judge Simon.
4. This ruling confirms that this proceeding is an adjudication scheduled for hearing.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated September 20, 2002, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

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Michael R. Peevey  
Assigned Commissioner

## **Appendix Prepared Written Testimony and Exhibits**

### **Service**

All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony should NOT be filed with the Commission's Docket Office.

### **Identification of Exhibits in the Hearing Room**

Each party sponsoring an exhibit should, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet should be *blank* for the ALJ's exhibit stamp.** Thus, if parties "pre-mark" exhibits in any way, they should do so in the upper left hand corner of the cover sheet. Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

### **Cross-Examination With Exhibits**

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

### **Corrections to Exhibits**

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**(END OF APPENDIX)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated September 20, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.